

**JACK L. HERZBERG and KRISTINE )  
A. HERZBERG, )**

**VS.**

## Defendants.

The facts, legal issues, and causes of action asserted by the parties in the present matter are substantially similar to those in the case of Barnard, et al. v. SunTrust Bank, et al., No. 1:11-cv-00289-MR (W.D.N.C.), and the same attorneys appear on behalf of the parties in each of these actions. Even though these cases have not been consolidated, and were in fact previously severed [see Civil Case No. 1:11-cv-00289-MR, Doc. 27], the Order of this Court previously entered in Barnard addresses and

disposes of all of the issues raised by the motion currently before the Court in this matter. The Order in Barnard, therefore, is incorporated herein, and the current motion will be disposed of in accord therewith.

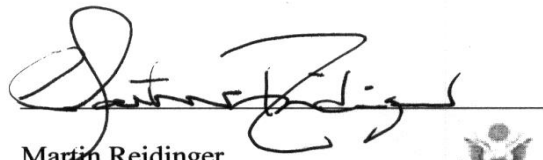
As the Plaintiffs have taken a voluntary dismissal of their action against Defendant April Kisselburg Davis, the motion to dismiss will be denied as moot with respect to that Defendant.

### **ORDER**

**IT IS, THEREFORE ORDERED** that the Motion to Dismiss [Doc. 7] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, with respect to the Plaintiffs' claim against SunTrust Bank for negligent misrepresentation, the Motion to Dismiss [Doc. 7] is **GRANTED** and this claim is **DISMISSED**. In all other respects, the Motion to Dismiss [Doc. 7] is **DENIED**.

**IT IS SO ORDERED.**

Signed: September 30, 2013

  
Martin Reidinger  
United States District Judge

